

October 29, 2004

Pamela B. Katz  
Chairman  
Connecticut Siting Council  
10 Franklin Square  
New Britain, CT 06051

**Re: Docket No. 272 – Connecticut Light and Power Company and United Illuminating Company Application for a New 345-kV Electric Transmission Line Between Scovill Rock Switching Station in Middletown and Norwalk Substation in Norwalk**

Dear Chairman Katz:

Richard Blumenthal, Attorney General for the State of Connecticut, hereby responds to the request for comments issued by the Connecticut Siting Council (“Council”) on October 22, 2004 regarding the appropriateness of taking administrative notice in the above-referenced proceeding of the transcript from the Federal Energy Regulatory (“FERC”) Commission technical conference held in Hartford on October 13, 2004 in FERC Docket No. PL04-14-000. For the reasons stated herein, the Attorney General respectfully requests that the Council not formally take administrative notice of that transcript. If the Council wishes to include the transcript in the record of this case, it should do so in the same manner in which it accepts statements from the public in this case during the evening sessions in the municipalities where the proposed transmission line is to be located.

The FERC technical conference was not a contested proceeding. Rather, the event consisted of opening statements from some of the participants who sat on the dais followed by a series of panel discussions on topics related to transmission improvements in Connecticut. The participants on the dais included Connecticut legislative leaders, Connecticut Department of Public Utility Control Commissioners, FERC Commissioners and staff, the Attorney General, utility regulators from other states in New England and a representative of ISO New England (“ISO-NE”). The panels were:

-Infrastructure in Connecticut. The speakers were: John Schnagl, Office of Energy Projects, FERC; Kevin Kirby, ISO-NE; S. Derek Phelps, Executive Director, Siting Council; and David Boguslawski, Vice President, Transmission Business, Northeast Utilities.

-Pricing and Cost Allocation Issues. The speakers were: Stephen G. Whitley, ISO-NE; Mary J. Healey, Connecticut Consumer Counsel; Joseph E. Brennan, Connecticut Business and Industry Association; Joseph McGee, SACIA; and Thomas Welch, Chairman, Maine Public Utility Commission.

-Safety Issues. The speaker was Dr. Robert Goldberg.

-Technology Options. The speakers were: Dennis Duffy, Competitive Power Coalition; Jeffrey A. Donohue, TransEnergie U.S., Ltd.; Doug Johnson, 3M Specialty Materials; John B. Howe, American Superconductor; and Steve Doyon, Comverge.

-Reliability Issues. The speakers were: Stephen G. Whitley, ISO-NE; and Roger C. Zaklukiewicz, Northeast Utilities.

-Utility Issues. The speakers were: Anthony Vallillo, United Illuminating Company; and Lee Olivier, Connecticut Light and Power Company.

The speakers that participated in the panel discussions were not sworn and there was no opportunity for cross-examination of the speakers. Moreover, only the participants on the dais were allowed to ask questions of the panelists.

Pursuant to the Uniform Administrative Procedure Act, with respect to administrative notice:

in contested cases . . . (6) notice may be taken of judicially cognizable facts and of generally recognized technical or scientific facts within the agency's specialized knowledge; (7) parties shall be notified in a timely manner of any material noticed, including any agency memoranda or data, and they shall be afforded an opportunity to contest the material so noticed.

Id. at § 4-178.

In the present case, the Council should not take formal administrative notice of the transcript from the FERC technical conference. First, the information contained in that transcript cannot reasonably be considered to be "judicially cognizable facts" or "generally recognized technical or scientific facts" as required by § 4-178(6). Rather, the transcript reflects only the opinions of the various panelists. Second, the information contained in that transcript lacks the indicia of reliability necessary to be considered as evidence in this case. The speakers were not

under oath and were not subject to cross-examination at the time. Indeed, the speakers were not subject to any questioning from the general public or from many parties or intervenors in the Council's Docket 272 proceeding. This raises a particular concern for those speakers that have provided sworn testimony in the present case, such as Mr. Whitley for ISO-NE and Mr. Zaklukiewicz for the Applicants.

Finally, pursuant to § 4-178(7), if the Council determines to take administrative notice of the transcript from the FERC technical conference, it must afford all parties and intervenors in this case adequate time to review the document and a full and fair opportunity to contest the information contained therein. This could be problematic since some of those speakers are not participants in the present case and there may be no practical way to allow cross-examination of the views that may have been expressed.

If the Council desires to include the transcript in the record in this case, it should do so in the same manner in which it accepts statements from the public which, like the statements expressed at the FERC technical conference, are not made under oath and are not subject to cross-examination. In the event, however, that the Council decides to take formal administrative notice of the transcript, it should afford the information contained therein the weight that it is due in light of the fact that the statements were not made under oath or subject to cross-examination, and proceed according to the provisions of Conn. Gen. Stat. § 4-178(7).

Very truly yours,

RICHARD BLUMENTHAL  
ATTORNEY GENERAL

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cc: Service list